

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3105 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

TENSILE STEEL LTD.

Versus

BOARD FOR INDUSTRIAL AND FINANCIAL REHABILITATION

Appearance:

MR MANISH R BHATT for Petitioners
NOTICE SERVED BY DS for Respondent No. 1, 8
MR PP BANAJI for Respondent No. 4
MR AC GANDHI for Respondent No. 6
MR RM DESAI for Respondent No. 7

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/05/98

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution, the petitioner-Company has prayed for a

writ or order to direct the respondents to take such steps or actions as may be necessary to ensure the compliance of the scheme sanctioned by the Board for Industrial & Financial Reconstruction {for brevity, "BIFR"} under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 {hereinafter referred to as "the Act" or "the SICA Act"} so as to enable the petitioner to implement the scheme of rehabilitation and to direct the State of Gujarat to grant permission under the Urban Land Ceiling & Regulations Act, 1976 {hereinafter referred to as the "ULC Act"} to sell and/or develop the land of the petitioners situate at Vishvamitri Road, Vadodara for the purpose of utilizing the sale proceeds for meeting the cost of the scheme as provided under the sanctioned scheme and also for other ancilliary reliefs.

2. The facts leading to filing of the present petition, as averred by the petitioner, are as under:-

2.1. Petitioner-Company has its registered Office & Works at Vishwamitri Road, Vadodara. The petitioner Company {hereinafter referred to as "the Company"} is engaged in the business of manufacturing PC wires, spring steel wires, G.I and M.S Fine wire to meet the requirement of various wire products such as bead wire, binding wire, and general engineering fasteners, etc. The company has plants and machineries, and an area outlay of 24.50 acres at Vadodara. The Company ran into financial difficulties and became sick. Therefore, a reference was made to the BIFR under the provisions of Section 15 of SICA Act in the year 1987 for determination of measures to be adopted in respect of the Company. BIFR held an inquiry and held that the company had become a Sick Industrial Company within the meaning of Section 3 (1)(O) of the Act and the Industrial Reconstruction Bank of India - Respondent No. 2 herein was appointed as the Operating Agency to examine the viability and to prepare a scheme for rehabilitation of the Company. During the year 1987 to 1991 all the efforts were made to prepare a viable scheme to revive the industrial unit of the Company. However, it was found that a viable scheme could be framed only if the Company is allowed by the State Government to sell the land, and the sale proceeds were used for discharging the liability of the Company. The Company, therefore, followed up with the State Government which was also appearing before the BIFR in the aforesaid proceedings. Ultimately, the State Government in the Revenue Department by its letter dated 16th December, 1992 addressed to the BIFR {Annexure "P-1"} conveyed its decision as under :-

"In the event of BIFR approving the rehabilitation package of Tensile Steel Limited, the State Government shall release the land of the Unit under the Urban Land Ceiling Act as per its policy, so as to enable the unit to pay dues of the Central and State Government, and release payments to the pressing creditors, Bank financial institution etc., as per the approval of Board of Industrial Finance & Reconstruction.

The Unit will then be entitled to utilize the land by sale or development in any manner which is more beneficial to this Unit."

2.2. The petitioner thereafter made efforts for about three years for sale of the land so as to prepare a viable scheme for revival of the Unit. During that period {June 1992 to February, 1994} the Company had also to face labour strikes resulting into closure of the Company for about two and half years. By the time petitioner-Company could arrange for a developer / purchaser of the land and resolve the labour problem, the Hon'ble Supreme Court, delivered judgment in the case of Vasudevan v. State of Karnataka, 1993 (3) SCC page 467 holding that under Section 20 of the ULC Act, the State Government has no power to release the land for the purpose of sale, hence, by its letter dated 8th May, 1995 {Annexure "P-2"} the State Government in the Revenue Department, notified the operating agency ie., Respondent No. 2 herein, that in view of the aforesaid decision of the Hon'ble Supreme Court, the State Government's earlier letter dated 16th December, 1992 stands modified. In view of the aforesaid stand of the State Government, it appears that BIFR was not in a position to sanction any scheme and expressed a prima facie opinion for winding up of the Company. The matter had, therefore, gone in appeal and in Appeal No. 56 of 1996, the Appellate Authority for Industrial & Financial Reconstruction ("AAIFR" for brevity) in its Order dated 7th May, 1996 noted that the decision in the case of Vasudevan v. State of Karnataka was over-ruled by the Hon'ble Supreme Court in the case of T.R Thandur v. Union of India, 1996 (3) SCC P-690 and it was held that financial hardship can be a valid ground for exemption under Section 20 of the ULC Act. The AAIFR, therefore, held that permission granted by the Government of Gujarat under its earlier communication dated 16th December, 1992 continued to be legal and valid. Accordingly, the matter was remanded to the BIFR for framing the scheme for revival of the Company.

Ultimately, BIRF sanctioned the scheme on 12th December, 1996 {Annexure "P-4"}. The said scheme was sanctioned after hearing all the parties, including the State of Gujarat. It was recorded in the proceedings of hearing held on 12th December, 1996 that all the parties including the State of Gujarat were present at the hearing and that all were agreeable to the notified draft scheme and the BIFR has sanctioned the scheme for its immediate implementation, subject to the modifications mentioned therein. The said scheme provided for various reliefs and concessions to be granted by various parties, including the State of Gujarat, as mentioned in Clause-F of para-8 of the Scheme, Sub-clause (vii) of Clause-F provided as under :-

"To grant necessary permission for sale/disposal of lands and not to charge any amounts except those payable for change of users and usual Municipal Taxes and charges for development and ultimate disposal of the property. Further, to permit the Company to mortgage/remortgage/develop/re-develop/lease/assign its land/properties either by itself or through its agents as per the existing guidelines/policy applicable to Sick Industrial Units."

2.3. Thereafter, the petitioner-company was requesting the State Government to grant all the reliefs and concessions as mentioned in the aforesaid sanctioned Scheme. On 19th July, 1997, Government of Gujarat, in the Industries & Mines Department, issued a Resolution (Annexure P-7) granting package of reliefs and concessions to the petitioner-Company which comprised of all the reliefs and concessions except the necessary permission for sale/disposal of the lands, as provided for in sub-clause (vii) of Para 8F of the sanctioned Scheme dated 12th December, 1996. Hence, the company made representations to the State Government for granting the permission for sale / development of the land of the petitioner-Company so as to generate the funds for meeting with the cost of the Scheme. Such representations are produced at Annexure P-5 and P-6 collectively. The petitioner requested the Government to issue permission as aforesaid, because if the said permission is not granted, the Bankers viz., Bank of India and Punjab & Sind Bank and GIIC were pursuing the BIFR for cancelling the Scheme sanctioned on 12th December, 1996.

2.4. The Government did not pay any heed to the aforesaid representations but insisted that Company

should surrender the surplus land to the State Government which would then auction/dispose of the said lands and thereafter the Government shall give soft loan out of the sale proceedings of such auction, and accordingly, the State Government did not grant permission to the Company for sale/disposal of the land. Ultimately, the matter was brought before the BIFR at the instance of the secured creditors to request the BIFR to declare the scheme as having failed. On 19th February, 1998, the BIFR heard the parties and passed an order cancelling the scheme sanctioned on 12th December, 1996 holding that the scheme had failed, inter alia, on the following grounds :-

2. The scheme envisaged cost of Rs. 2085 lakhs, which included inter alia, one time settlement (OTS) of the dues of Institutions/Banks at Rs. 1775 lakhs. A major portion of the cost Rs. 1379 lakhs was to be met by advance for development of property and the balance by way of promoters contribution.
2. The scheme further envisaged from State Government of Gujarat to grant necessary permission for sale/disposal of land as also to permit the Company to mortgage / remortgage / development / redevelop / lease / assign its land/properties either by itself or through its agents as per the existing guidelines / policy applicable to sick industrial units. However, the State Government insisted that the Company should surrender the surplus land to the State Government which would then auction the same through the State Government machinery since the State Government representative was duly present at the meeting dated 12-12-1996 when the draft scheme was considered. The sanctioned scheme enjoined the consent of the State Government. Accordingly, the State Government was repeatedly advised by the Board to abide by the sanctioned. However, the State Government failed to grant the necessary permission.
3. Following objections raised by State Government of Gujarat regarding sale / development of land, Mahindra Reality & Infrastructural Development (MRDL) stopped further release of funds and hence TSL failed to honour its own commitments."

That BIFR also gave certain consequential

directions to the Agency in view of the failure of the Scheme.

2.5. The Company took up the matter in Appeal before the Appellate Authority {AAIFR} which admitted the appeal and stayed the order of BIFR till disposal of the appeal. Ultimately on 23rd April, 1998, the appellate authority held as under :-

"The permission granted by GOG under their earlier letter dated 16-12-1992 continues to be legally valid. Moreover, it is noticed that when the scheme was sanctioned by BIFR, a representative of GIIC/GOG was present and no objection was raised on behalf of GOG. Therefore, it is open to TSL to sell/dispose of the land in accordance with para 8F of the sanctioned scheme read with GOG's earlier letter dated 16-12-1992."

The appellate authority also noted that when it was dictating the order allowing the appeal, a fax message was received from the Government of Gujarat praying for adjournment by one month on the ground that the necessary information in this regard has been called from the concerned department and that information is yet to be received, but the Appellate Authority rejected the said request on the ground that order of Appellate Authority is based on the letter dated 16th December, 1992 of the Government of Gujarat read with para 8 F of the sanctioned Scheme dated 12th December, 1996 which permitted sale/disposal of land of the Company in order to raise funds for meeting the substantial part of the sanctioned scheme.

3. It is in the aforesaid background that the Petitioner Company has approached this Court for the aforesaid reliefs, particularly for the relief to direct the State of Gujarat to grant permission under the ULC Act to sell and/or develop the land of the petitioners for the purpose of utilizing the sale proceedings for meeting the cost of the scheme as provided under the sanctioned scheme.

4. In response to the notice issued by this Court, the State Government has appeared and filed its Affidavit-in-Reply dated 6th May, 1998. In the facts and circumstances of the case, the matter has been taken up for final disposal today.

5. At the hearing of the petition, Mr. R.P Bhatt,

the learned counsel for the petitioner-Company submitted that the entire success of the rehabilitation Scheme as sanctioned by the BIFR depends on the grant of permission to the petitioner-Company to sell/develop the land as noted in the orders of the BIFR and the AAIFR particularly in para 2 of the BIFR order dated 19.2.1998. It is further submitted that in view of the sanctioned scheme dated 12th December, 1996, the petitioner Company had already persuaded respondent No. 4 Mahindra Realty & Infrastructure Development Limited, Bombay {A subsidiary of Mahindra & Mahindra Limited} to part with substantial funds for meeting with the costs of the Scheme and accordingly Bank of India was already paid Rs. 3 crores towards its dues and another sum of Rs. 1 crore for the Working Capital and so also Punjab & Sind Bank was paid Rs. 96 lacs from the funds made available by respondent No. 4. Petitioner-Company has also paid Rs. 1 crore to the workers and all the persons in the Management have contributed Rs. 166.85 crores. It is, therefore, submitted that it is not open to the Government of Gujarat to refuse to grant permission. If the permission is not granted, the petitioner Company may be wound-up resulting into loss of employment to 350 workers and also loss of substantial revenue to the State Government, as will be clear from the following figures mentioned in para-28 of the petition :-

Sales-Tax for	Amount
the Year {Rs. in lacs}	
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1994-95	1170.84
1995-96	2350.72
1996-97	2702.95
1997-98 upto September, '97.	1261.82

It is therefore submitted that in view of the aforesaid facts as well as in view of binding effect of the sanctioned scheme as restored by the Order dated 23rd February, 1998 by the AAIFR, the State Government is bound to give permission for sell/disposal of the land.

6. On behalf of Respondent No. 4 viz., Mahindra Realty & Infrastructure Development Limited, learned counsel Shri KN Rawal has submitted that, as stated in the Affidavit-in-Reply filed on behalf of Respondent No. 4, during the proceedings before BIFR, the BIFR had earlier recommended on 12/4/1989, 24/8/1990, 21/1/1991 and 19/3/1993 to wind up the petitioner-Company in absence of any genuine and viable offer from any Developer but the liquidation of the Company was averted

by the Company filing repeated appeals to the AAIFR with different development proposals until MRIDL, respondent No. 4 herein, came on the scene, and that it was in response to the petitioner-Company's offer, that respondent No. 4 came forward to undertake the development arrangement and that after being satisfied about respondent No. 4's bonafides and appreciating that a reputed and financially sound developer had come forward for the development proposal which would enable the Company to pay-off its major creditors, namely the two Banks viz., Bank of India and Punjab & Sind Bank that the BIFR sanctioned the Rehabilitation Scheme on 12th December, 1996 with the consent of the State Government and the two Banks. It is further submitted that it was relying on the State Government's willingness to assist the Company, as per its letter dated 16th December, 1992 and the petitioner's readiness to recover the substantial part of the dues from the development arrangement and the recommendation of the Appellate Authority {AAIFR} made on 12th June, 1995, while remanding the case to BIFR to the effect that if the development proposal with respondent No. 4 goes through, a Scheme can be effectively implemented, that respondent No. 4 commenced making advance payments from March, 1995 onwards. The recommendation by the AAIFR made respondent No. 4 to bonafide believe that any scheme that would be framed and ultimately sanctioned by the BIFR would have the development proposal with respondent No. 4 as an integral part of it and that respondent No. 4 would be in a position to effectively and actually utilize these development rights in consideration of the monies advanced and to be advanced by it. Accordingly, it was after clarifying its aforesaid stand before the BIFR that respondent No. 4 had paid Rs. 3 crores to Bank of India and Rs. 96 lacs to Punjab & Sind Bank towards the dues of the petitioner-Company and also deposited Rs. 1 crore in a No Lien Account of Bank of India against the working capital facility to be made available by Bank of India to the petitioner-Company. Thus, a total amount of Rs. 4.96 crores {lacs} was made available by the respondent No. 4 to the two Banks who are secured creditors and to whom the petitioner-Company had mortgaged its land for securing the loans. It is, therefore, submitted on behalf of respondent No. 4 that in all respondent No. 4 has gone out of pocket to the extent of principal sum of Rs. 8.31 crores and yet not an inch of benefit has accrued to it inspite of passage of considerable time, since rehabilitation scheme was sanctioned in December, 1996. Strong reliance is also placed on the decision of the Apex Court in Diamond Plastic Industries versus Govt. of Andhra Pradesh & Others reported in AIR 1997 (SC) 2775

for contending that the State Government having been a party to the proceedings is bound to honour the Scheme sanctioned by the BIFR on 12th December, 1996 and restored by AAIFR on 23rd April, 1998.

7. Mr. Sundaresan Narayan, Chief Manager Bank of India, Mr. AC Gandhi, learned Counsel for Punjab & Sind Bank, respondent No. 6 and Mr. R.M Desai, learned Counsel for Gujarat Industrial Investment Corporation {GIIC} who are the major creditors of the petitioner-Company are also present. None of them have raised any objection to the petitioner being granted the reliefs and the State Government being directed to comply with the sanctioned scheme. No relief is claimed against respondent No. 1, 2 and 8.

8. On the other hand, Mr. C.C. Bhalja, learned AGP has vehemently opposed the petition and has submitted that the State Government was justified in refusing to grant permission to the petitioner-Company for sale/disposal of the land in question as the land was subject to the provisions of Urban Land Ceiling Act and the State Government had already taken the policy decision as to what sort of relief should be granted to sick industrial companies, while considering their request for grant of permission to sell/dispose of their lands. He submitted that as per the Government resolution dated 18th March, 1996 issued by the State Government through Industries & Mines Department, with the consent of the Revenue & Finance Departments, if any such sick Company is desirous of disposing of its vacant surplus land pursuant to any proceedings before the BIFR, such Company must first surrender its vacant urban land to the State Government under the provisions of the ULC Act, and thereafter, the State Government will dispose of such land and from the sale proceeds, 90% of the amount shall be advanced to the sick Company on soft terms. The said loan amount will have to be repaid within 10 years with no interest to be charged for first two years, and thereafter, interest will be charged @ 4% for the next four years and @ 8% for the last four years and that the difference between the market rate of interest and the aforesaid rate of interest shall be treated as sacrifice made by the Government for revival of the concerned sick industrial unit. It is, therefore, submitted that the State Government cannot be expected to act contrary to its policy decision contained in the aforesaid resolution dated 18th March, 1996.

9. Having heard the learned counsel for the parties at length, this Court is of the view that whatever may be

the merits of the stand of the State Government, the State Government is bound by the Order dated 23rd April, 1998 of the Appellate Authority {AAIFR} holding that the permission granted by the Government of Gujarat by its letter dated 16th December, 1992 continues to be legally valid and that when the scheme was sanctioned by the BIFR, a representative of the State Government was present and no objection was raised on its behalf, and therefore, it is open to the petitioner-Company to sell/dispose of the land in accordance with para-8F of the sanctioned scheme, read with Government of Gujarat's earlier letter dated 16th December, 1992, and therefore, there is no difficulty in implementing the scheme dated 12th December, 1996.

10. The State Government was a party to the proceedings before the BIFR and it was as early as on 16th December, 1992 that the State Government had granted consent subject to the BIFR sanctioning the scheme to the petitioner-Company to sell/dispose/develop the land in any manner which is more beneficial to the Unit for the purpose of enabling the Unit to pay-off dues of the Central and State Governments and release payment to the pressing creditors, bankers, financial institutions of the Company. It is only on account of judgement in Vasudevan's case that the State Government had to express its inability to grant permission for sale, and therefore on 8th May, 1995 it had to say in its letter at p-2 that the consent given by the Government in its letter dated 16-12-1992 had to be read as modified in light of the judgment of the Hon'ble Supreme Court in the case of K. Vasudevan (Supra). In fact, the draft scheme was to fail on that ground but the subsequent decision of the Hon'ble Supreme Court in the case of T. R Thandur v. Union of India (Supra) came to the rescue of the petitioner-Company and the AAIFR also took note of the said judgment, while remanding the matter to the BIFR in Appeal No. 56 of 1996 on 7th May, 1996. Moreover, the State Government was also a party to the proceedings before the BIFR and its representative had also not raised any objection to the scheme which was finally sanctioned on 12th December, 1996; particularly sub-clause (vii) of para 8F of the Scheme.

11. It is true that words "as per existing guidelines/policy applicable to the sick industrial units" are to be found in the aforesaid sub-clause but the main part of sub-clause specifically provides that the State Government shall "grant necessary permission for sale/disposal of the land and not to charge any amount as those payable for charge

of users and usual Municipal Taxes and charges for development and ultimate disposal of the property, and further, shall permit the Company to mortgage / remortgage develop/redevelop/lease/assign its lands/properties either by itself or through its agents. Hence, the main part of Para 8F(vii) confers specific and effective relief to be granted by the State Government to the Company. The guidelines/policy as per the Government Resolution dated 18th March, 1996 requiring the party to surrender the land to the Government and confer power on the State Government to dispose of the land, and thereafter, providing soft term loan to the company out of the said proceeds must be held to be prospective and in any case inconsistent with the main part of para-8 (F)(vii) of the Scheme sanctioned by the BIFR under the provisions of Section 18 of the SICA Act and in its order dated 23rd April, 1998 the AAIFR has removed any doubt by specifically clarifying that the State Government is bound to act as per its letter dated 16th February, 1992.

12. In case of Diamond Plastic Industries v. Govt. of Andhra Pradesh and others reported in AIR 1997 SC 2775, the Hon'ble Supreme Court held that where the State Government is a party to the proceedings before the BIFR and the Scheme is sanctioned after giving the Government an opportunity of being heard, the Scheme is binding on all the parties, including the State Government. It is specifically observed in the said decision that the decision of the BIFR binds the parties and the State Government is also bound to implement the direction issued by the BIFR.

13. Under the circumstances, the State Government is required to be directed to comply with para 8 (F)(vii) of the scheme sanctioned by the BIFR, as interpreted and explained by the AAIFR in its Order dated 23rd April, 1998 in appeal No. 24/98.

14. However, in view of the grievance made by learned AGP that the State Government had prayed for adjournment before the AAIFR but the same was not granted, and therefore, the State Government could not present its case before the AAIFR, some more time is required to be granted to the State Government for complying with the directions proposed to be issued by this Court in light of the aforesaid discussion, so that in case the State Government is desirous of challenging the order dated 23rd April, 1998 of the AAIFR, the State Government may get reasonable time for that purpose.

15. For the foregoing reasons, this petition is allowed. It is directed that, subject to the right of the State Government to challenge the Order dated 23rd April, 1998 of the Appellate Authority for Industrial & Financial Reconstruction in Appeal No. 24/98, the State Government shall comply with the scheme sanctioned by the BIFR on 12th December, 1996 as interpreted and explained by the Appellate Authority in its Order dated 23rd April, 1998, passed in Appeal No. 24/98, within two months from today, unless in the meantime the aforesaid Order of the AAIFR in Appeal No. 24/98 is stayed by any appropriate Court of Law.

16. Rule is made absolute to the aforesaid extent with no order as to costs.

Prakash*